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## THE ABUSE

OF

# THE PARDONING POWER.

#### PHILADELPHIA:

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### ABUSE OF THE PARDONING POWER.

To Mr. SAMUEL WOOD,

Warden of the Eastern State Prison of Pennsylvania.

Dear Sir,—I have perused with great satisfaction the work of Mr. Crawford, and the commissioners associated with him; it contains a valuable series of reports on the state of British prisons, and the enlarged and liberal views of those gentlemen on the penal system. I am pleased to find that they give a preference to the plan of separate confinement; their judicious remarks and suggestions cannot fail to produce the most beneficial effects. The important duties with which they were charged by the British government appears to have been faithfully and honourably fulfilled. Accept my best thanks for the loan of this valuable work. I have to acknowledge, through your polite attention, the receipt of the tenth annual report of the Inspectors of the Eastern Penitentiary of Pennsylvania, by which I rejoice to learn that you have succeeded, on application to your legislature, in procuring the services of a respectable minister of the gospel and moral instructor of the prisoners. The able report of the inspectors bears ample testimony of the piety and zeal with which he discharges his ministerial duties. To labour in such a cause must be productive of infinite good, and a reward far beyond all earthly considerations awaits hereafter the christian, whose successful efforts have been directed to the reformation of the unhappy criminal. I believe that the Pennsylvania system, under judicious management, may be rendered the most perfect in the world. I should be glad to know from you whether any extra provision is made for such prisoners who, during the term of years for which they were sentenced, have conducted themselves in the most irreproachable manner, and gained the confidence of the officers of the institution; and if a certificate of their good deportment is granted to them on their discharge. The Pennsylvania system of separate and solitary imprisonment has thus far prospered under the fostering care of her legislature; and I sincerely hope that no untoward event may occur to mar an experiment which has successfully borne the test of ten years' duration. It is not all the knowledge of prison discipline you possess, added to your experience, prudence and firmness, which can prevent it from failing, if the abuse of the pardoning power should ever be unfortunately carried to excess. Of the 4

evils to be dreaded, this is one of the most formidable, and can be made the most destructive to the peace of society. Laws are designed for the protection of persons and property, to shield the innocent, and punish the guilty. If a faithful and equitable administration of justice can be defeated by corrupt measures, we should, indeed, have cause to deplore human degeneracy.

It is the solemn and imperative duty of the chief magistrate to adhere to a rigid and impartial execution of the laws. Cases may arise which require his elemency without a sacrifice of honour and justice. One of the most noble attributes of the Deity is mercy: "It droppeth as the gentle rain from heaven upon the place beneath; it is twice blessed; it blesseth him that giveth, and him that takes." It is a contested point, whether the pardoning power would not be more safe, if given to judges of profound legal knowledge and integrity, than it is, as now vested, in the governor of a state. It is contended that the responsibility ought not to be divided; but would not you prefer to confide in the judgment of seven wise men, rather than trust your cause to a man who may be deficient both in ability and integrity, and incapable of solving the intricacy of a legal point, on the issue of which may depend the safety of life and property? According to the opinion of the learned Dr. Paley, "the prerogative of pardon is properly reserved to the chief magistrate;" and he adds, "but let this power be deposited where it will, the exercise of it ought to be regarded, not as a power to be yielded to solicitation, granted to friendship, or, least of all, to be made subservient of political attachments, but as a judicial act, as a deliberation to be conducted with the same character of impartiality, with the same exact and diligent attention to the proper merits and circumstances of the case, as that to which the judge on the bench was expected to maintain, and show, in the trial of the prisoner's When a man of unblemished character fills the office of chief magistrate, and his virtues have secured for him the respect and confidence of the people, we can have nothing to fear for the cause of justice; but if public servants act under the corrupt influence of a faction, the rights and property of citizens become endangered, when subjected to its control. The abuse of the pardoning power, whether it proceeds from ignorance, morbid sensibility, or base motives, is demoralizing, and has a direct tendency to increase crime as much as the common and injurious practice of bailing criminals taken in the act of committing felony. The inspectors of prisons should be extremely cautious how they recommend prisoners to executive clemency, for the most incorrigible villain may wear the mask of hypocrisy, and, by assuming a penitent demeanour, impose on the credulity of the unsuspicious. While on this subject, I would refer you to an interesting and sensible letter of Judge Hopkinson, dated Oct.

10th, 1820, in reply to a committee of the state of New York, on the old penitentiary system. The judge dwells with proper emphasis on what he terms "the indiscreet and thoughtless exercise of the power of pardoning:" he remarks that it strikes at the vital principle of the system; and observes, "that the facility of granting pardons, most generally on the recommendation of inspectors, but often of persons having no knowledge of either the criminal or his crime, has greatly impaired the foundation of the system, and deprived us of the uses that might have been derived from it under a most vigorous execution of its provisions." It is justly remarked, by an eminent writer, that one pardon has contributed more to excite the hope of escape, than twenty executions, to produce the fear of punishment. If pardons are to be granted at the solicitations of political friends and favourites, wise laws will be of no avail: the midnight robber may roam at large, and the assassin escape unpunished. "Fiat justitia, ruat cælum" is the motto which ought to be adopted by every friend of justice. It is really lamentable to reflect, how many evils may arise from the various means which are resorted to, for the purpose of favouring the escape of criminals from punishment; and not one is more reprehensible than that of pardoning convicts in the state in which they have committed offences, on condition of their leaving it. Mr. Charles G. Haines, of New York, in his report on the penitentiary system, expresses in strong and merited language, his indignation against this impolitic practice. He says, "it is immoral, unjust, and disgraceful;" it is opening your prison doors, and sending forth so many outlaws, to mar the peace, and plunder the property of citizens in neighbouring sections of the Union. many of the most populous countries of Europe, where labour is at a very reduced price, and thousands are without employment, we are not surprised that men and women should be compelled, from dire necessity, to commit petty thefts to procure sustenance for themselves and families; and in such cases I would deem it an act of cruelty, among a starving population, to carry the law into rigorous execution. Under these circumstances mercy pleads for the poor, and a refusal to pardon would be impious. In the United States, where high wages are given, and the means of subsistence so easily procured, there is little or no excuse to be made for offenders against the laws. And I concur with an eminent writer,\* "the general interest requires" that the administration of justice should not be diverted from its settled course by an erroneous assumption of power, and an irregular distribution of justice. The success of every public institution must depend upon good management, and the zeal and

<sup>\*</sup> The late estimable William Rawle, Esq.

integrity of the officers appointed to conduct it. The eastern state prison of Pennsylvania may be considered as the most perfect model, by which every state can benefit in imitating. penitentiaries on the old system, where convicts are assembled promiscuously, both at their meals and at work, are schools of vice, and not of reformation. It is truly said by Mr. Haines, in his able report on the penitentiary system, "that six months' solitary confinement in a cell would leave a deeper remembrance of horror on the mind of the culprit, and inspire more dread, and prove a greater safeguard against crimes than ten years' imprisonment in our penitentiaries as they are now managed." Any innovations on the Pennsylvania system, or material deviations from the general arrangement which now exists, must be deprecated. A remarkable instance is related by Mr. Crawford, of the great injury arising to the morals of prisoners, from not adhering to the system of solitary imprisonment in England. In his account of the prisons of Horsham, Petworth, and Gloucester, he observes, "we find, that under the operation of the separate system in these prisons, committals to them became unprecedently few, and that recommittals almost disappeared: we find the health of the convicts excellent, their mental faculties unimpaired, their labours eheerful and constant, their behaviour orderly and submissive, and their religious instruction carefully attended to, and with the happiest results. When the system was broken in upon, and suspended by the influx of numbers, for whom it was impossible to provide separate apartments, nearly the reverse of all this took place; order was succeeded by insubordination; labour, instead of being voluntary, became distasteful and constrained, and religious instruction, with all its desirable consequences, was either neglected or became ineffi-I have good authority for saying, that in many instances, in various parts of the United States, where prisons have been crowded to excess with convicts, many of the most hardened in villainy have been pardoned to make room for others.

It is stated by Mr. Haines, in his report, that Mr. Parsons, in his Letter on the Penitentiary System of Virginia, considered the granting of pardons one cause of its failure to answer the desired end. He mentions also, on the authority of the Northern Review, that out of fourteen hundred and seventy-one convicts who have been sent to the Massachusetts State Prison during a period of sixteen years, two hundred and forty-two have been pardoned, and twenty of them have been afterwards committed again. Lord Coke, Lord Mansfield, Sir Samuel Romilly, Sir James M'Intosh, and many other highly distinguished and learned men, have condemned the frequent and injudicious exercise of the pardoning power. It is, however, much to be regretted, that very little attention has been paid to their opinions. When

faction shall cease to govern by the aid of intrigue and corruption, and the arm of justice, supported by virtue, shall direct the destinies of mankind, we may then hope, in all cases, that the equitable administration of the laws will prevail, and that the sacred prerogative of pardoning, whether vested in a monarch or a republican chief magistrate, will be cherished with a virtuous determination never to use it but in the cause of truth and innocence. I must now be permitted to call your attention to the questionable right of commuting punishment, or changing the sentence of a Court of Justice: this power has been often assumed, either from ignorance, misconception, or some other cause; but there is not a word in the Constitution of the United States, or any State of the Union, (except South Carolina), to sanction the use of it, either by the President of the United States, or the governor of a state. It has been asserted by intelligent men, that this is an implied right, possessed by every chief magistrate, to whom the Constitution of his State grants the power of pardoning, and it is yet a point of contention. It is to be regretted that a question of such importance should remain undecided. With regard to the power of pardoning, granted by the Constitution of the United States to the President, it is clearly and unequivocally expressed; it confines him to the granting of reprieves and pardons for offences against the United States, except in cases of impeachment. The Constitution of every State in the Union, is equally explicit on this subject; there is nothing vague, or undefined. It is easy, however, for a caviller to put a misconstruction on the words of a written compact, and to act upon it in conformity to his own views of right or wrong. Some men may be found, who are so arrogant and casuistical as to suppose that the consciences of others must be regulated by their creed, and that nothing is valid but what they deem to be so.

In this age of experiments and innovation, every new sect considers its own system of ethics the most genuine; and every political gambler and hypocrite, (under the mask of patriotism,) is only seeking for a division of the spoils. But to return to the subject of commuting punishment: you will find under the second article of the Constitution of South Carolina, this power is possessed by the Governor of that State alone, as expressed in the following words, and so explicit as not to be misunderstood. "He shall have power to grant reprieves and pardons after conviction, except in cases of impeachment, in such manner, on such terms, and under restrictions as he shall think proper, and he shall have power to remit fines and forfeitures, unless otherwise directed by law."

I have sufficiently trespassed on your time, which I know is not always at your disposal, owing to numerous and official engagements. I am already indebted to you for much valuable information, which you have so freely and candidly imparted, and which I highly appreciate, as coming from a practical man, whose knowledge of prison discipline, derived from much observation and great experience, is more interesting and useful than

what can be commonly obtained from books.

I know that you are thoroughly familiarized with all the minutiæ of the Pennsylvania system of solitary imprisonment, and that your philanthropic views and correct conception of the best mode of adapting punishment to crime, and of reforming the criminal, entitle your opinions to respect. In looking into the Constitution of Georgia, you will find that the Governor is not permitted to pardon murder or treason; in these cases "he may respite the execution, and make report thereof to the next General Assembly, by whom a pardon may be granted." I am much pleased with this provision, and think it an admirable feature in the Constitution of that State. It is a severe responsibility for a chief magistrate to assume, and I prefer that it should rest with the legislative body.

I have endeavoured to make this communication as brief as the subject will admit of; it is one of vast importance, and on which I would be happy to have your opinion, whenever your leisure will allow you to write. You can say much that will elucidate it, as I am persuaded, that many instances have come within your immediate knowledge of the abuse of the power of pardoning. I regret that it is out of my power to do justice to this subject; nevertheless, much good may be derived from an agitation of it, for frequent discussion will often lead to a satis-

factory result.

I am, dear sir, with great regard and esteem,

Yours sincerely, P. TIDYMAN.

Bordentown, New Jersey, July 11th, 1839.

## Eastern State Penitentiary,

Philadelphia, 9th mo. 24th, 1839.

My DEAR FRIEND,—Thy excellent letter of July 12th, was duly received, and was read with much pleasure. Thy views show a degree of soundness on the subject which too few arrive at.

I was sure thou wouldst be pleased with the report of William Crawford. This elaborate work must be considered the best that was ever written on the Prisons of the United States. I regret that Congress has not had it republished, as it is not likely

from the limited sale of such works, to be done by individual enterprise. The Reports on the Prisons of Great Britain, made to parliament by him, in connexion with Wentworth Russell, contain more information respecting the prisons of that country, than was ever before embodied in any work, and I hope that it will lead to an entire reformation of the Penitentiary system.

In speaking thus favourably of the report of Wm. Crawford, I do not wish to detract from the merits of M. de Tocqueville and M. de Beaumont, who preceded him in this country, or those who succeeded him, Dr. Julius, and M. de Metz. Their works have great merit, and contain much valuable information, and all agree in many very important points. Wm. Crawford had however advantages and qualifications which fitted him in a very peculiar degree for this special mission. He had been for twenty years actively and assiduously engaged in visiting the Prisons, Work Houses, and Houses of Refuge, in the Metropolis of England, and perhaps no man of that country knew as much of these establishments, and their unhappy inmates as he did. Not content with the wide field to be found among the old and depraved convicts, his philanthropic heart led him among the destitute and abandoned youth; and night after night have I seen him providing a shelter for these poor and neglected Uniting in his character, the rare qualifications of zeal, intelligence, and benevolence, in a pre-eminent degree, it may be said that he came among us, rather to see than to learn, and it is no matter of surprise, that such a man should produce such a report.

It is now nearly ten years since the first prisoner was received into this Penitentiary. Its establishment was the result of the exertions and experience of many good men of this state, who have since the year 1787 been endeavouring to improve the system of Prison Discipline. Indeed, it may be said, that their labours commenced previous to the Revolution. Every effort has been made, and no expense spared, to render it as perfect as possible; and if success has not crowned the work, it has not

been for want of zeal on the part of those engaged in it.

What then is this system which so many good men have been more than half a century endeavouring to perfect? It is a system from beginning to end of privations rather than punishments; where the culprit, by being treated in all respects as a human being, may be made better, but will not probably be made worse.

Among the various evils that were known to exist in the old mode of managing Prisons, by those who were most active in devising and perfecting the separate system, was the constant abuse of the pardoning power.

In the Walnut street Prison, with upwards of six hundred prisoners, there were but six keepers, and no guard. In order to

prevent the successful combinations among the prisoners to effect their escape, it was deemed necessary to recommend once a month a number of prisoners for pardon, which request was

generally granted by the executive.

When, however, the convicts were removed from that Prison to this, no such excuse could exist, as we could make them behave well and keep them securely without the aid of pardons. The friends of reform hoped that this abuse would cease in the State of Pennsylvania; they knew that it had been tolerated on the score of necessity, but when there was no such necessity, they expected that this abuse would terminate. The Inspectors of this Institution have always acted on this principle.

Although pardons have not been procured with the same facility they formerly were, our governors do not appear to have been fully impressed with the injury society necessarily sustains, where the executive frequently exercises the pardoning power, nor to be aware how much such a course militates against

the success of the system.

The pleas of humanity and mercy are constantly urged in behalf of these criminals; and those opposed to the indiscriminate exercise of this perogative, are often accused of a want of the common feelings of humanity. If a thorough acquaintance with Prisons and their inmates entirely eradicates all the kind and good feelings of our nature, then their allegations are true. For I know not of a single individual that has ever paid much attention to the science of Penal Jurisprudence, that does not agree with those highly intelligent men mentioned in thy letter, as to the propriety of the free exercise of this prerogative. As far as the good of the prisoner is concerned, I am sure its effects are highly pernicious; having a tendency to prevent all the good that otherwise might be produced by our mild system. When a prisoner knows that his sentence will be certainly carried into execution, the effect on his mind is more beneficial, even for a short period of imprisonment, than from a more prolonged period, when he is actuated by the hope of pardon and release.

The court and jury, having had all the facts before them, certainly are the best judges of the innocence or guilt of the prisoner, and should be best qualified to say how long he should be imprisoned—and unless there can be some new and important testimony produced that could not be exhibited on

trial, the sentence of the court should remain unchanged.

Seldom, very seldom, is the petition for a pardon got up on the ground of innocence, improper evidence, severity of sentence, or new evidence. The position often taken, is that— First: The prisoner has a large family who are dependent on him for support. Second: That he has hitherto borne a good character, and that this is his first conviction. Third: That he is in delicate health, and that unless liberated, he may die in Prison; and Fourth: That the imprisonment has had its effect, that he is a reformed and truly penitent and religious man.

If the first position be true, and if pardons be granted in consequence, should not the court, upon the same principle, refrain from sentencing every man who has a large family dependent on him. But the fact is, that in many cases, the family is better without the man than with him. Most judges take into consideration the former character, and give the prisoner the advantage of it in his sentence.

I have known many prisoners feign sickness, to work on the feelings of inspectors, and those under whose charge they were.

It is the opinion of some able writers that so soon as the prisoner becomes truly reformed, that then his sentence should cease; that the law, having had its effect, no more was to be done or expected. If we admit this doctrine to be correct, (which I deny,) an insurmountable difficulty at once presents itself. Who that is humanc can be certain of the sincerity of these professions? With all my knowledge of prisons, I should be sorry to be made the

judge of their sincerity or hypocrisy.

Although the petition for pardon frequently (as before stated) contains some of the preceding four reasons, yet the friends of the prisoners most depend on the personal influence that can be brought to bear on the executive, without regard to the crime or character of the individual, or the circumstances of the case. The respective members of the jury are first importuned, and often persecuted by constant visits until a majority of names are procured; next an array of names are appended, not one of whom may have ever known or cared about the prisoner. Next an effort is made to obtain a letter from some influential friend of the governor: he hears an ex-parte account of the affair, and is induced to write, saying the case is a hard one, and that he would esteem it a favour if a pardon was granted. It would be wrong in the extreme to convict a man on ex-parte evidence, or not to give him an opportunity to cross-examine or rebut the testimony of the commonwealth. Is it not doing as great a wrong to the public to pardon when the petition is ex-parte, and when the public is wholly ignorant of the application for pardon, and therefore unprepared to vindicate the justice of the sentence? If the legislature is in session, the members, from the particular county, are importuned, and they attack the governor. case that I recollect while writing, a majority of the voters in a large county were actually procured, by paying an agent so much per signature for all he could procure, and his expenses in travelling about the county. It is not an uncommon thing to pay agents large fees to procure a pardon. I have known as much as one thousand dollars in one case, and five hundred in two

others given, merely to purchase the personal influence of the individual; and in three instances success attended the application. They were all long sentenced for high crimes, and I need

hardly add, improper subjects for pardon.

I do not believe that in either of these cases the pardon would have been granted, if the Governor had been apprized of the facts. Indeed, in one of the cases, I took occasion to state to the Governor the fact of the five hundred dollars being paid; when he expressed great indignation at the course the agent had pursued, and his regret that he had not known it before the pardon had been granted. I could give thee a volume of cases of similar abuse, if it were expedient. From what I have seen and known, I am satisfied, that the villain guilty of the highest crime is likely to be pardoned, provided he has friends, who have influence with the Governor, or the same will be the result, provided he has money to pay an agent.

After more than twenty years intimate and close acquaintance with Prisons, having seen some hundreds pardoned, I cannot call to mind six individuals to whom a pardon was of actual benefit, or for whom it would not have been better, that they had remained in Prison. While on the other hand, I have known scores to be pardoned, once, twice, and even three times, and to go out and fall at once into their old habits. Most of these were under the old system. I must however add, that even of the comparatively few that have been pardoned from this house, the same must be said of some of them, that they have returned to their evil ways with greater avidity.

The Governor of this State has no power to commute, and although I have known conditional pardons to be granted, it is well understood that the condition is of no effect. I think it the safer plan, that no discretion should be vested in the Governor to

commute.

As much as we have to deplore the abuse of the pardoning power, it seems necessary to meet the exigencies for which it was originally intended, that such a power should somewhere exist, and I am not surprised that there should be an honest difference of opinion, as to where it should be placed. I have been of the opinion that it would be best to give the entire responsibility to one; say the Governor, believing that where it is shared with several, the responsibility is not equally felt. If the pardon was granted on judicial grounds, I admit that the judges would be a more proper tribunal; but as this is very seldom the ease, I would not divide the responsibility, as recommended in thy letter.

Our mutual friend, Judge Hopkinson, who has long been sensible of the great abuse of this power, endeavoured in the

late Convention, to have some wholesome checks introduced into the Constitution; but to my surprise, that highly intelligent body did not seem to appreciate the value of his suggestions, and no alteration was made. One of his propositions was, that no pardon should be granted, without the approbation of the judge who sentenced a convict. The above proposition would be a wholesome amendment to our present system.

During the present year, the prisoners have been allowed overwork, and some of them are accumulating considerable sums, which will be paid them, when they are discharged. No certifi-

cate of their good conduct is given.

I am, with much esteem and respect,

Thy very sincere friend,

SAMUEL R. WOOD.

DR. P. TIDYMAN.





